

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

INES FIGUEROA,

Plaintiff,

v.

PONCE DE LEON FEDERAL BANK,

Defendant.

Civil Action No. 11-CIV-7633-PAC-HBP

**DEFENDANT'S MEMORANUM OF  
LAW IN REPLY TO PLAINTIFF'S  
MEMORANDUM OF LAW IN  
OPPOSITION TO THE REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE  
HENRY B. PITMAN**

**PRELIMINARY STATEMENT**

United States Magistrate Judge Henry B. Pitman issued a Report and Recommendation on July 2, 2012 in this matter (the "Report and Recommendation"). The Report and Recommendation concluded with a recommendation to this Court to grant a pending motion filed by Defendant Ponce De Leon Federal Bank ("Defendant") asking the Court to dismiss this case. On July 13, 2012, Plaintiff Ines Figueroa ("Plaintiff") filed a document which apparently is seeking to lodge opposition to the Report and Recommendation. While Plaintiff's procedural intent is not wholly clear, the most rational interpretation of the filing is that Plaintiff has sought to object to the Report and Recommendation pursuant to Fed. R. Civ. Pro. 72(b)(2). This Memorandum of Law is filed in opposition to Plaintiff's objections and in support of the Report and Recommendation.

**ARGUMENT**

This matter has been fully briefed before by Defendant, and those filings are incorporated by reference herein. Further, the Report and Recommendation correctly analyzed the issue insofar as it addressed the Defendant's arguments relating to the statute of limitations: Plaintiff was separated from employment with Defendant in 2007 and does not allege that any action of discrimination or any wrongdoing occurred after 2007. (Plaintiff also signed a release and

received significant compensation. In Defendant's most recent filing she concedes that the consideration for the release was \$43,000). The Report and Recommendation found that the statute of limitations had clearly expired from 2007 until the time of her recent filing. Based upon her own allegations there is simply no basis upon which the statute of limitations defense can be breached and if for no other reason the Report and Recommendation should be adopted.

Judge Pitman, finding that the claim was time-barred, did not address the defense that a valid release also precludes suit. However, Plaintiff received \$43,000 in compensation for a release of all claims (which is admitted in her various filings and is therefore not a fact which is at issue). Accordingly, Defendant also has the separate and valid defense that the matter has been properly released, a defense to which a Plaintiff has no legal or factual response.

In sum, there is no conceivable basis upon which this matter could or should be permitted to continue.<sup>1</sup> Consequently, it is respectfully requested that the Report and Recommendation be adopted and this case dismissed.

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<sup>1</sup> Indeed, if the Plaintiff continues to file frivolous papers, Defendant, pursuant to Fed. R. Civ. Pro. 11, will seek counsel fees for reimbursement for its efforts in continually opposing a claim devoid of merit.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the Report and Recommendation of the United States Magistrate Judge be adopted, that Defendant Ponce De Leon Federal Bank's motion should be granted, and that this suit should be dismissed with prejudice and without the opportunity to amend.

Dated: New York, New York  
July 19, 2012

**ANDERSON KILL & OLICK, P.C.**

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